



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

June 4, 2003

Ms. Judy Brown
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2003-3808

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183193.

The Llano Independent School District (the "district"), which you represent, received a request for certain payment information. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted sample records.¹

Section 552.108(a)(1) of the Government Code excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. This office has concluded, however, that where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983).

You indicate that the requested records pertain to criminal investigations being conducted by the Office of the Attorney General's Prosecutor Assistance/Special Investigations Division and the District Attorney's Office for the Thirty-third Judicial District. You also indicate that you have notified these entities of this request so that they can make the requisite demonstration that the release of the information at issue will interfere with their

¹We assume that the submitted sample records are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

criminal investigations. *See generally* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under Gov't Code § 552.108). In response to your notification, both entities have contacted this office and have stated that they do not wish to withhold the requested information under section 552.108. Accordingly, none of the requested information may be withheld under the law enforcement exception.

We note, however, that the district has marked certain information that appears to be its credit card and checking account numbers.² Under section 552.136 of the Government Code, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential. Gov't Code § 552.136. Thus, if the marked portions of the submitted documents are credit card and checking account numbers, we agree that this information must be withheld under section 552.136. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

²In the future, the district must mark the submitted documents in a manner that will not hamper our ability to review the information at issue. Failure to properly comply with the provisions of section 552.301 of the Government Code will result in the information being deemed public. *See* Gov't Code § 552.301 (requiring, among other things, that governmental body submit requested information in manner that allows attorney general to rule on applicability of exception); *see also* Gov't Code § 552.302 (stating that requested information is presumed public if governmental body fails to comply with procedural requirements of Gov't Code § 552.301).

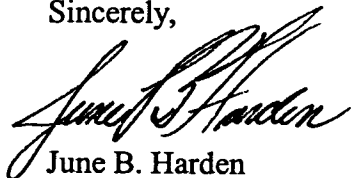
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 183193

Enc: Submitted documents

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